IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 90 OF 2005

SHRI AGNELO MENEZES AND 9 ORS., ...Appellants

Versus

MRS.BIBIANA LOURDES D'SOUZA AND 11 ORS., ...Respondents

Mr. Anthony D'Silva, Advocate for the appellants.

Coram:- D. D. SINHA, J.

Date:- 29th November, 2005

P.C.

Heard Mr. D'Silva, the learned Counsel for the appellants. The appellants are the original defendants No.1, 3 to 9, 14, 16 and 18 against whom the respondents No.1 and 2/original plaintiffs filed the suit for declaration, which was dismissed by the trial Court. Being aggrieved by the same, first appeal was preferred by the respondents/original plaintiffs which was allowed. Hence, this second appeal. Perusal of the order passed by the lower appellate Court clearly demonstrates that the plaintiff stepped into the witness box claiming that the property in question was purchased by sale deed dated 09.01.1968. Copy of the sale deed was produced on record and exhibited as P-1. The original defendant No.1 and 2 and husband of defendant No.2 have not disputed these aspects. It is also admitted fact that the property sold under the sale deed dated 09.01.1968 is described under Description No.30497 which corresponds to Matriz No.161 with regard to landed portion and matriz No.29 with regard to the house existing thereon which was sold under the Sale Deed to the plaintiffs by the defendants. The lower appellate Court, in paragraph 13 of the Judgment, has observed thus :

" A plain reading of the Sale Deed at exhibit P.1 clearly shows that the entire property described under no.30497 and corresponding to Matriz No.161 as well as 29 was sold in favour of the plaintiffs. There is no mention of any exclusion of any portion or any structure which has been retained by the defendants or the vendors."

2. From the findings arrived at by the lower appellate Court, it is evident that in order to consider the title acquired by the plaintiffs what is relevant is the Sale Deed dated 09.01.1968 and the recitals therein. If that is so, the lower appellate Court rightly concluded the issue in this regard and was justified in setting aside the Judgment and Decree passed by the trial Court.

3. The substantial question of law raised by the appellants is, whether the oral evidence is not permissible under section 92 of the Evidence Act, even when the terms contained in the documents are ambiguous and are not clear to determine the true intention of the parties?

4. In the instant case, it is nobody's case that the terms and conditions/description given in the sale deed regarding the property in question was ambiguous and, therefore, there is no question of leading any oral evidence in order to prove the contents of the sale deed which is even, otherwise, prohited by Section 92 of the Evidence Act. In that view of the matter, there is no question of law involved in this second appeal. The second appeal is dismissed,

D. D. SINHA, J.

ssm.